

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Brian Whitaker**

Plaintiff,

v.

**Dons Hotel Owner LP**, a Delaware  
Limited Partnership;  
**Tesla Wireless Inc.**, a California  
Corporation

Defendants.

**Case No.** 3:20-cv-07743-JCS

**First Amended Complaint For  
Damages And Injunctive Relief  
For Violations Of:** Americans  
With Disabilities Act; Unruh Civil  
Rights Act

Plaintiff Brian Whitaker complains of Dons Hotel Owner LP, a Delaware Limited Partnership; Tesla Wireless Inc., a California Corporation; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord injury. He is a quadriplegic. He uses a wheelchair for mobility.

2. In October 2020, Defendant Dons Hotel Owner LP leased the real property located at or about 97 Jefferson Street, San Francisco, California, to Defendant Tesla Wireless Inc. to operate Phone King thereon.

1       3. Currently, Defendant Dons Hotel Owner LP leases the real property  
2 located at or about 97 Jefferson Street, San Francisco, California, to Defendant  
3 Tesla Wireless Inc. to operate Phone King thereon.

4       4. Defendant Tesla Wireless Inc. owned and operated Phone King, located  
5 at or about 97 Jefferson Street, San Francisco, California, in October 2020.

6       5. Defendant Tesla Wireless Inc. owns and operates Phone King (“Store”)  
7 located at or about 97 Jefferson Street, San Francisco, California, currently.

8       6. Plaintiff does not know the true names of Defendants, their business  
9 capacities, their ownership connection to the property and business, or their  
10 relative responsibilities in causing the access violations herein complained of,  
11 and alleges a joint venture and common enterprise by all such Defendants.  
12 Plaintiff is informed and believes that each of the Defendants herein is  
13 responsible in some capacity for the events herein alleged, or is a necessary  
14 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
15 the true names, capacities, connections, and responsibilities of the Defendants  
16 are ascertained.

17  
18       **JURISDICTION & VENUE:**

19       7. The Court has subject matter jurisdiction over the action pursuant to 28  
20 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
21 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

22       8. Pursuant to supplemental jurisdiction, an attendant and related cause  
23 of action, arising from the same nucleus of operative facts and arising out of  
24 the same transactions, is also brought under California’s Unruh Civil Rights  
25 Act, which act expressly incorporates the Americans with Disabilities Act.

26       9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
27 founded on the fact that the real property which is the subject of this action is  
28 located in this district and that Plaintiff's cause of action arose in this district.

**FACTUAL ALLEGATIONS:**

10. Plaintiff went to the Store in October 2020 with the intention to avail himself of its goods and to assess the business for compliance with the disability access laws.

11. The Store is a facility open to the public, a place of public accommodation, and a business establishment.

12. Unfortunately, on the date of the plaintiff's visit, the defendants failed to provide wheelchair accessible sales counters in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

13. The Store provides sales counters to its customers but fails to provide any wheelchair accessible sales counters.

14. A problem that plaintiff encountered was that the sales counter was too high and there was no lowered portion of the sales counter suitable for wheelchair users.

15. Plaintiff believes that there are other features of the sales counters that likely fail to comply with the ADA Standards and seeks to have fully compliant sales counters for wheelchair users.

16. On information and belief, the defendants currently fail to provide wheelchair accessible sales counters.

17. These barriers relate to and impact the plaintiff's disability. Plaintiff personally encountered these barriers.

18. As a wheelchair user, the plaintiff benefits from and is entitled to use wheelchair accessible facilities. By failing to provide accessible facilities, the defendants denied the plaintiff full and equal access.

19. The failure to provide accessible facilities created difficulty and discomfort for the Plaintiff.

20. The defendants have failed to maintain in working and useable conditions those features required to provide ready access to persons with

1 disabilities.

2 21. The barriers identified above are easily removed without much  
3 difficulty or expense. They are the types of barriers identified by the  
4 Department of Justice as presumably readily achievable to remove and, in fact,  
5 these barriers are readily achievable to remove. Moreover, there are numerous  
6 alternative accommodations that could be made to provide a greater level of  
7 access if complete removal were not achievable.

8 22. Plaintiff will return to the Store to avail himself of its goods and to  
9 determine compliance with the disability access laws once it is represented to  
10 him that the Store and its facilities are accessible. Plaintiff is currently deterred  
11 from doing so because of his knowledge of the existing barriers and his  
12 uncertainty about the existence of yet other barriers on the site. If the barriers  
13 are not removed, the plaintiff will face unlawful and discriminatory barriers  
14 again.

15 23. Given the obvious and blatant nature of the barriers and violations  
16 alleged herein, the plaintiff alleges, on information and belief, that there are  
17 other violations and barriers on the site that relate to his disability. Plaintiff will  
18 amend the complaint, to provide proper notice regarding the scope of this  
19 lawsuit, once he conducts a site inspection. However, please be on notice that  
20 the plaintiff seeks to have all barriers related to his disability remedied. See  
21 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
22 encounters one barrier at a site, he can sue to have all barriers that relate to his  
23 disability removed regardless of whether he personally encountered them).

**I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

24. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

25. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

1       26. When a business provides facilities such as sales or transaction counters,  
2 it must provide accessible sales or transaction counters.

3       27. Here, accessible sales or transaction counters have not been provided in  
4 conformance with the ADA Standards.

5       28. The Safe Harbor provisions of the 2010 Standards are not applicable  
6 here because the conditions challenged in this lawsuit do not comply with the  
7 1991 Standards.

8       29. A public accommodation must maintain in operable working condition  
9 those features of its facilities and equipment that are required to be readily  
10 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

11       30. Here, the failure to ensure that the accessible facilities were available  
12 and ready to be used by the plaintiff is a violation of the law.

13  
14 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
15 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
16 Code §§ 51-53.)

17       31. Plaintiff repleads and incorporates by reference, as if fully set forth  
18 again herein, the allegations contained in all prior paragraphs of this  
19 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
20 that persons with disabilities are entitled to full and equal accommodations,  
21 advantages, facilities, privileges, or services in all business establishment of  
22 every kind whatsoever within the jurisdiction of the State of California. Cal.  
23 Civ. Code §51(b).

24       32. The Unruh Act provides that a violation of the ADA is a violation of the  
25 Unruh Act. Cal. Civ. Code § 51(f).

26       33. Defendants’ acts and omissions, as herein alleged, have violated the  
27 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
28 rights to full and equal use of the accommodations, advantages, facilities,

1 privileges, or services offered.

2 34. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
3 discomfort or embarrassment for the plaintiff, the defendants are also each  
4 responsible for statutory damages, i.e., a civil penalty. Cal. Civ. Code  
5 § 55.56(a)-(c).  
6

7 **PRAYER:**

8 Wherefore, Plaintiff prays that this Court award damages and provide  
9 relief as follows:

10 1. For injunctive relief, compelling Defendants to comply with the  
11 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
12 plaintiff is not invoking section 55 of the California Civil Code and is not  
13 seeking injunctive relief under the Disabled Persons Act at all.

14 2. Damages under the Unruh Civil Rights Act, which provides for actual  
15 damages and a statutory minimum of \$4,000 for each offense.

16 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
17 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52.

18 Dated: March 23, 2021

CENTER FOR DISABILITY ACCESS

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20  
21 By: /s/ Christopher A. Seabock

22 Christopher A. Seabock  
23 Attorney for Plaintiff  
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